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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/941,046	08/28/2001	Robert T. Eitel	6065-82368	5725
24628	7590	12/01/2006	EXAMINER	
WELSH & KATZ, LTD 120 S RIVERSIDE PLAZA 22ND FLOOR CHICAGO, IL 60606			MEINECKE DIAZ, SUSANNA M	
			ART UNIT	PAPER NUMBER
			3694	

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/941,046

Applicant(s)

EITEL ET AL.

Examiner

Susanna M. Diaz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/21/06
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 21, 2006 has been entered.

Claims 14, 27, 28, and 41 have been amended.

Claims 1-41 are pending.

### ***Response to Arguments***

2. Applicant's arguments filed September 21, 2006 have been fully considered but they are not persuasive.

Applicant argues the following:

...Independent claims 1, 14, 27, 28, and 41 call for automatically adjusting the performance threshold in response to a change in a parameter related to the task. Thus, the threshold is adjusted, for example, for such factors as time of day, or complexity of the bill. This feature is not disclosed or suggested by Stuart or any of the other cited references. Stuart at the passage cited by the Office Action (paragraphs 27 and 48) discusses flexible thresholds manually set by management but does not disclose automatic threshold adjustment (or even manual adjustment of set thresholds) nor does it describe adjusting them in response to a change in a parameter related to the task... (Page 10 of Applicant's response)

The Examiner respectfully disagrees. As seen in ¶¶ 27 and 48 of Stuart, a plurality of thresholds, e.g., triggering the generation of exception reports, may be set. These thresholds may be set flexibly for individual call agents. Management sets the thresholds using the agent performance system (or automatically) and they may adjust them accordingly (again using the agent performance system, or automatically) for different agents, e.g., based on the experience of each agent or the mix of calls handled by each agent). Also stated in ¶ 27 of Stuart is that "the thresholds are indeed flexible because they can differ at all levels of reporting detail. For instance, the flexible thresholds for individual call agents 13 could be different than those for call center 11. Further, the flexible thresholds can vary between and among call agents 13 to allow for the probable disparity in productivity between and among new and experienced operators." Stuart's invention allows management to enter flexible threshold data into the computer system such that the computer system can utilize the threshold data. Use of a computer system to perform or facilitate performance of a given function is an example of automatically performing the function. A "probable disparity in productivity between and among new and experienced operators" (used to vary flexible thresholds, as per ¶ 27) is an example of a difference, or change, in parameter that is used to adjust the thresholds.

In conclusion, Applicant's arguments are non-persuasive and the art rejection is maintained.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-3, 7-10, 14-16, 20-23, 28-30, and 34-37 are rejected under 35 U.S.C. 102(e) as being anticipated by Stuart et al. (US 2001/0032120).

Stuart discloses an apparatus for maintaining and improving a performance level of an agent performing a plurality of tasks, such apparatus comprising:

[Claim 14] a performance threshold for each task of the plurality of tasks (¶¶ 27, 48 --

A plurality of thresholds, e.g., triggering the generation of exception reports, may be set.

These thresholds may be set flexibly for individual call agents);

means for monitoring at least one of the plurality of agent tasks to measure a performance parameter of the agent in completing the at least one of the plurality of tasks (¶ 20 -- A stat pack measures the call agent/call center performance factors);

means for automatically adjusting a respective performance threshold in response to a change in a parameter related to the at least one task (¶¶ 27, 48 -- A plurality of thresholds, e.g., triggering the generation of exception reports, may be set. These thresholds may be set flexibly for individual call agents. Management sets the thresholds using the agent performance system (or automatically) and they may adjust

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them accordingly (again using the agent performance system, or automatically) for different agents, e.g., based on the experience of each agent or the mix of calls handled by each agent. Also stated in ¶ 27 of Stuart is that “the thresholds are indeed flexible because they can differ at all levels of reporting detail. For instance, the flexible thresholds for individual call agents 13 could be different than those for call center 11. Further, the flexible thresholds can vary between and among call agents 13 to allow for the probable disparity in productivity between and among new and experienced operators.” Stuart’s invention allows management to enter flexible threshold data into the computer system such that the computer system can utilize the threshold data. Use of a computer system to perform or facilitate performance of a given function is an example of automatically performing the function. A “probable disparity in productivity between and among new and experienced operators” (used to vary flexible thresholds, as per ¶ 27) is an example of a difference, or change, in parameter that is used to adjust the thresholds);

means for notifying a supervisor when the measured performance parameter of the agent in performing a task exceeds the respective performance threshold of the task for the at least one task of the plurality of tasks (¶¶ 27, 48 -- A plurality of thresholds, e.g., triggering the generation of exception reports, may be set; ¶¶ 13, 29 -- Both supervisors and the call agents are presented with the reports);

[Claim 15] means for comparing the measured performance parameter of a task with the respective performance threshold of the task for each task of the plurality of tasks (¶¶ 27, 48 -- A plurality of thresholds, e.g., triggering the generation of exception

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reports, may be set. These triggers are generated based on a comparison of measured performance of a task with a respective performance threshold for each monitored task);

[Claim 16] wherein the plurality of tasks further comprises a single repetitive operation (§ 20 -- Answering calls in a call center may be interpreted as a single repetitive operation; §§ 38, 44 -- Searching for information, e.g., as a directory assistance agent, is also indicative of a type of single repetitive operation);

[Claim 20] wherein the measured performance parameter further comprises sales per unit time period (§ 38 -- The total dollar amount sold and/or the number of products/service units sold by a call agent are measured. Call agent productivity is ultimately expressed in terms of a call agent cost, which is measured for a certain unit of time, as seen in §§ 30-34; § 41 -- Time adjustments may be made for varying work hours of an agent; § 27 -- The flexible standards are compared to standards established for "session of the day, Saturday, Sunday or Holidays." This implies that a call agent's performance is measured in relation to a given time period, e.g., a unit time period);

[Claim 21] wherein the measured parameter further comprises errors per unit sale (§ 37 -- Disconnected calls, also referred to as "No Voice, No Answer" (NVNA), are seen as potentially lost sales and can therefore be interpreted as errors per unit sale);

[Claim 22] wherein the means for measuring the performance parameter further comprises means for measuring an average call handling time (§§ 28-29 -- The traditional measurement of average work time (AWT), or average calling handling time, is used in combination with cost data to assess call center performance);

[Claim 23] wherein the means for providing a performance threshold for each task of the plurality of tasks further comprises means for measuring a performance parameter of an exemplary agent in completing each task of the plurality of tasks (§ 27 -- The productivity of experienced operators may be measured. Also, standards may be set based on a "high performing norm (HPM), such as the 90<sup>th</sup> percentile").

[Claims 1-3, 7-10] Claims 1-3 and 7-10 recite limitations already addressed by the rejection of claims 14-16 and 20-23 above; therefore, the same rejection applies. Furthermore, § 44 of Stuart discloses a training notification related to the need for training an agent.

[Claims 28-30, 34-37] Claims 28-30 and 34-37 recite limitations already addressed by the rejection of claims 14-16 and 20-23 above; therefore, the same rejection applies.

Furthermore, Stuart teaches that the supervisor is notified via a display (§§ 13, 29 -- Both supervisors and the call agents are presented with the reports).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.



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6. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stuart et al. (US 2001/0032120), as applied to claims 1-3, 7-10, 14-16, 20-23, 28-30, and 34-37 above, in view of Official Notice.

[Claim 27] Claim 27 recites limitations already addressed by the rejection of claim 14 above; therefore, the same rejection applies.

Furthermore, Stuart sends reports to the supervisor alerting him/her when certain thresholds have been exceeded (§§ 13, 27, 39, 48); however, Stuart does not expressly disclose means for sorting the notifications to the supervisor based upon a relative magnitude by which the measured performance parameter exceeded the performance threshold. However, Official Notice is taken that it is old and well-known in the art of supervisory monitoring to sort alerts by urgency. For example, there are dashboard alert systems that color code different alerts (e.g., red being most urgent and yellow being less urgent but potentially requiring attention). The sorting of notifications assists management in more quickly identifying which problem areas need the most immediate attention. Since Stuart's reporting system assists management in identifying problems that may require some sort of resolution (e.g., additional training may be provided to the agent (§ 44) or agents could be scheduled in a more cost effective manner (§ 49)), the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Stuart's reporting capabilities to incorporate means for sorting the notifications to the supervisor based upon a relative magnitude by which the measured performance parameter exceeded the performance threshold in order to better assist Stuart's management personnel in more quickly identifying which

problem areas need the most immediate attention, thereby increasing the chances of more quickly resolving any potential problems affecting call center performance.

7. Claims 4-6, 11-13, 17-19, 24-26, 31-33, and 38-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stuart et al. (US 2001/0032120), as applied to claims 1-3, 7-10, 14-16, 20-23, 27-30, and 34-37 above, in view of Applicant's admitted prior art, and further in view of Official Notice.

[Claims 17-19, 24-26] Stuart monitors the productivity of various agents in a call center based on several factors, especially factors that contribute to the cost for each agent (§ 34). While Stuart does not expressly take into account the specific details recited in claims 17-19, Stuart does state, 'The present invention does not seek to limit the factors that contribute to the cost for each agent. Rather, the cost utilized for calculation of the C/SWT is intended to be the sum of all call agent cost data that is deemed important to the user.' (§ 34) The following statements have been established as Applicant's admitted prior art:

- (1) time for entry of information is a common way of determining effectiveness and productivity of sales and collections agents, respectively,
- (2) errors per entered bill are common quality determinations for sales and collections,
- (3) bill payment information entries are common tasks related to collections agent duties.

Additionally, Official Notice is taken that it is old and well-known in the art of call center management to run call centers that address billing transactions and questions. Since Stuart is open to the application of its invention in a call center affected by varying performance factors, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to adapt Stuart's call center performance monitoring system and method to function in a billing environment in order to make Stuart's invention more versatile and marketable to a wider body of customers, thereby increasing the marketing potential of Stuart's invention. As seen in Applicant's admitted prior art, various aspects of assessing the performance of billing and collections agents are old and well-known in the art as well. Additionally, Official Notice is taken that it is old and well-known in the art of billing-related call centers for agents to progress through various screens while assisting a customer. The length of time taken for progression through these screens would affect the length of time an agent spends assisting a customer, thereby contributing to the overall call length (a factor generally taken into account by Stuart, ¶¶ 28-29, 33). Therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to utilize with the modified version of Stuart (adapted to a billing-related call center) more billing related performance factors, wherein the plurality of tasks parameter further comprises time between screens in a predetermined progression of screens (claim 17), wherein the plurality of tasks further comprises reciting information from at least some screens of the predetermined progression of screens (claim 18), wherein the means for measuring a performance parameter further comprises means

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for detecting errors in the recited information of the at least some screens (claim 19), wherein the plurality of tasks further comprises entry of bill and bill payment information from a plurality of customers into a billing computer (claim 24), wherein the measured parameter further comprises time for entry of each bill (claim 25), and wherein the measured parameter further comprises errors per entered bill (claim 26) in order to more successfully integrate Stuart into the billing call center environment, thereby making such a modified version of Stuart even more attractive to a wider range of customers and more greatly increasing its marketing potential.

[Claims 4-6, 11-13] Claims 4-6 and 11-13 recite limitations already addressed by the rejection of claims 17-19 and 24-26 above; therefore, the same rejection applies.

[Claims 31-33, 38-40] Claims 31-33 and 38-40 recite limitations already addressed by the rejection of claims 17-19 and 24-26 above; therefore, the same rejection applies.

[Claim 41] Claim 41 recites limitations already addressed by the rejection of claims 14, 27, and 28 above; therefore, the same rejection applies.

### ***Conclusion***

8. Examiner notes that, as per MPEP § 2144.03(C), the statements of Official Notice made in the art rejection have been established as admitted prior art since Applicant has not traversed the Examiner's assertions of Official Notice. More specifically, the following statements of Official Notice are now formally established on record as admitted prior art:

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Official Notice is taken that it is old and well-known in the art of supervisory monitoring to sort alerts by urgency.

Official Notice is taken that it is old and well-known in the art of call center management to run call centers that address billing transactions and questions.

Official Notice is taken that it is old and well-known in the art of billing-related call centers for agents to progress through various screens while assisting a customer.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on (571) 272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Susanna M. Diaz  
Primary Examiner  
Art Unit 3694

November 27, 2006